

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
 , ID No.

Telephone Number:

Refer Reply To:
CC:CORP:B06
PLR-103622-08

Date:
May 01, 2008

Acquiring =

Foreign Acquiring Disregarded
Entity =

Target 1 =

Target 2 =

Target 3 =

Company Official =

Date A =

Date B =

Date C =

Date D =

Date E =

Dear :

This letter responds to a letter dated January 24, 2008, requesting, on behalf of Acquiring, an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. Acquiring is requesting an extension to file a “§ 338 election” under § 338(g) (sometimes hereinafter referred to as the “Election”) with respect to the acquisition of Target 3 in a series of transactions completed on Date B. The material information submitted in the January 24, 2008, letter and supplemental letters is summarized below.

Acquiring is the common parent of an affiliated group that filed a consolidated Federal income tax return for the tax year ended Date C. Acquiring owns all the stock of Foreign Acquiring Disregarded Entity, a corporation disregarded as separate from its owner for U.S. Federal income tax purposes. Target 1 owns all the stock of Target 2. Target 1 and Target 2 are foreign corporations. Target 1 and Target 2 own all of the ownership interests in Target 3, a Country A partnership taxable as a corporation for U.S. Federal income tax purposes.

Between Date A and Date B, Acquiring, through Foreign Acquiring Disregarded Entity, acquired all of the stock of Target 1 in exchange for cash. Target 1 became a controlled foreign corporation before Date B. It is represented that the acquisition of the stock of Target 1 qualified as a “qualified stock purchase” as defined in § 338(d)(3).

Acquiring filed a § 338(g) election with respect to Target 1 and Target 2. An election with respect to Target 3 was due on Date D, but for various reasons, a valid Election was not filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Election.

The period of limitations on assessment under § 6501(a) for the consolidated group for the taxable years in which the acquisition occurred, the taxable years in which the Election should have been filed, or any taxable year that would have been affected by the Election had it been timely filed, will not expire until at least Date E.

Section 338(a) permits certain stock purchases to be treated as asset acquisitions if: (1) the purchasing corporation makes or is treated as having made a " § 338 election"; and (2) the acquisition is a "qualified stock purchase."

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election.

Section 301.9100-1(a) describes the Commissioner's authority to grant an extension of time to make a regulatory election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.338-2(d)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Acquiring to file the Election, provided Acquiring acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Acquiring and Company Official explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that the Acquiring reasonably relied on a qualified tax professional who failed to make, or advise Acquiring to make, a valid Election. See § 301.9100-3(b)(1)(v). The information further establishes that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service and that the interests of the government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(i).

Based on the facts and information submitted, including the representations made, we conclude that Acquiring has shown it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-3, until 45 days from the date on this letter, for Acquiring to file the Election with respect to the acquisition of the stock of Target 3.

WITHIN 45 DAYS OF THE DATE ON THIS LETTER, Acquiring must file the Election on Form 8023, in accordance with § 1.338-2(d) and the instructions to the form. A copy of this letter must be attached to Form 8023.

WITHIN 120 DAYS OF THE DATE ON THIS LETTER, all relevant parties must file or amend, as applicable, all returns and amended returns (if any) necessary to report the transaction as a § 338 transaction for the taxable year in which the transaction was consummated (and for any other affected taxable year). A copy of this letter and a copy of Form 8883 must be attached to the returns. Alternatively, taxpayers filing their returns electronically may satisfy the requirement of attaching a copy of the letter by attaching a statement to their return that provides the date and control number of the letter ruling.

The above extension of time is conditioned on the consolidated group's tax liability (if any) being not lower, in the aggregate, for all years to which the Election applies, than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to the taxpayer's tax liability for the years involved. A determination thereof will be made by the applicable Director's office upon audit of the Federal income tax returns involved. Further, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that the taxpayers' tax liability is lower. Section 301.9100-3(c).

We express no opinion as to: (1) whether the acquisition of the Target 1 stock qualifies as a "qualified stock purchase" under § 338(d)(3); or (2) any other tax consequences arising from the Election.

In addition, we express no opinion as to the tax consequences of filing the Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Election late that are not specifically set forth in the above ruling. Notwithstanding that an extension is granted under § 301.9100-3 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Ken Cohen

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Corporate)